

competing contractor, any future employment or business opportunity [end of General Order]. See 48 CFR 3.104-6.

(2) This prohibition does not apply to a procurement official:

(i) After he leaves Federal Government service;

(ii) Who is employed by a contractor, subcontractor, consultant, expert, or advisor after he ceases to act on behalf of, or provide advice to, the procuring agency concerning the procurement;

(iii) Who has been granted recusal, in writing, in accordance with the provisions of 48 CFR 3.104-6 and paragraph (a)(4) of this action and who has in fact discontinued participation in the procurement;

(iv) Whose only communication with a competing contractor is to reject an unsolicited offer of employment or business opportunity or advise the competing contractor that he must seek recusal prior to any discussion regarding the unsolicited offer;

(v) Who has made inquiry in good faith of the potential contractor and been advised that the contractor is not or will not become a competing contractor on a procurement on which the individual is a procurement official; or

(vi) Where the procurement official engages in conduct in good faith reliance upon a written ethics advisory opinion;

(vii) After the procurement has been concluded by the award or modification of a contract or the cancellation of the procurement.

(3) A procurement official may discuss employment or business opportunities with a competing contractor only if a written recusal request was submitted and approved in accordance with the policy and procedures contained in 48 CFR 3.104-6 (c) through (h). The head of the contracting activity has the authority to approve or disapprove a request for recusal; however, he may not approve recusal for a procurement official who has participated personally and substantially in certain evaluation functions listed in 48 CFR 3.104-6(c).

(4) Any DoD procurement official or former DoD procurement official may, by written request, seek advice from his DoD component DAEO or designee regarding whether he may be precluded

by the procurement integrity rules from engaging in a specified activity. See 48 CFR 3.104-8.

(i) The request must provide the DoD component DAEO or designee with sufficient information to make a determination.

(ii) The DoD component DAEO shall make his determination, in writing, within 30 days, or as soon thereafter as practicable.

(iii) A copy of the request and the ethics advisory opinion shall be retained for six years, in accordance with DoD component procedures.

(b) *Penalties.* Violation of the provisions of 41 U.S.C. 423 is punishable by the full range of sanctions, including the following:

(1) *Civil penalties.* Individual violators may be subject to a civil fine not to exceed \$100,000. Violators, other than individuals, may be subject to a civil fine not to exceed \$1 million.

(2) *Administrative sanctions.* See § 84.39.

#### **§ 84.27 Reporting employment contacts (10 U.S.C. 2397a).**

(a) *Individuals required to file.* The following DoD employees are required by this part and by 10 U.S.C. 2397a to report, in writing, their employment contacts to their supervisor and DoD component DAEO or designee:

(1) Any military officer in grade O-4 or above, or any civilian DoD employee serving in a position for which the rate of pay is equal to or greater than the minimum rate of pay for GS/GM-11 who;

(2) At any time during his DoD service, performed a "procurement function" involving a defense contractor which received at least \$25,000 a year in DoD business; and

(3) Who contacts or is contacted by that defense contractor regarding future employment.

(b) *Content of report.* Reports of employment contacts shall include:

(1) The name, title, agency address, and telephone number of the reporting individual;

(2) The name of the defense contractor concerned;

(3) The date of each contact covered by the report; and

(4) A brief description of the substance of each contact.

(c) *Disqualification statement*—(1) *Individuals required to file disqualification.*

(i) Any DoD employee required to submit a report of an employment contact shall submit to his supervisor a written statement disqualifying himself from participating in any “procurement function” involving the defense contractor until such time as the possibility of future employment with that defense contractor has been rejected by either party.

(ii) Procurement officials may be required to request recusal through formal procedures requiring written approval by the head of the contracting agency. See § 84.26(a).

(2) *Distribution of disqualification.* The disqualification statement shall be given to the DoD employee’s supervisor and the Ethics Counselor. It also should be provided to others who might contact the DoD employee regarding the defense contractor which is the subject of the disqualification.

(3) *Contents of disqualification.* The disqualification statement shall contain:

(i) The name, title, agency address, and telephone number of the DoD employee submitting the report;

(ii) The extent of disqualification (i.e., a description of duties affecting the defense contractor the DoD employee may not perform as a result of the disqualification);

(iii) Identification of the DoD employee or office that will handle duties during the disqualification period; and

(iv) An explanation of any other steps required to avoid potential conflicts of interests;

(v) If the statement is necessary only because of a second contact which was rejected, information in accordance with paragraphs (c)(3)(iii) and (c)(3)(iv) of this section.

(4) *Withdrawal of disqualification.* A DoD employee may withdraw a disqualification if employment discussions conclude with no arrangement regarding future employment, or if such an arrangement is ended, by notifying, in writing, the same individuals who received copies of his disqualification statement.

(5) *Review and retention of disqualification.* The supervisor, with the assistance of the Ethics Counselor, shall re-

view the disqualification statement to make sure it will prevent any conflict of interest and to determine whether the DoD employee can still carry out his responsibilities adequately. Both the supervisor and the Ethics Counselor shall retain a copy of the disqualification statement for three years.

(d) *Exception.* A DoD employee need not report the contact or disqualify himself from officially participating in a particular matter involving the defense contractor if the first contact was initiated by the defense contractor and the DoD employee immediately terminates the discussion and unequivocally rejects consideration of employment opportunities. If the contact is renewed by either the defense contractor or the DoD employee, all contacts must be reported.

(e) *Penalties.* An individual who fails to report an employment contact or to disqualify himself as required by paragraphs (a) through (c) of this section may be subject to the following administrative penalties:

(1) Prohibition of employment with the defense contractor concerned for up to ten years from the date of separation from DoD; and

(2) An administrative penalty not to exceed \$10,000.

#### **§ 84.28 DoD guidance.**

(a) *Appearances.* DoD employees shall:

(1) Ensure that the prospect of employment does not affect the performance or non-performance of their official duties;

(2) Ensure that they do not communicate inside information to a prospective employer; and

(3) Avoid any activity that would affect the public’s confidence in the integrity of the Federal Government, even if it is not an actual violation of the law.

(b) *Written guidance.* DoD employees may obtain counseling and written advice concerning restrictions on seeking other employment from their Ethics Counselor:

(1) Although the counseling and advice are given by DoD attorneys and involve the interpretation of law and